

MF 96-4  
Tax Type: MOTOR FUEL USE TAX  
Issue: Off-Highway Usage Exemption

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	Docket #
v.	)	License #s
TAXPAYER	)	
	)	Karl W. Betz
Taxpayer	)	Administrative Law Judge

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RECOMMENDATION FOR DISPOSITION

SYNOPSIS

THIS CASE INVOLVES TAXPAYER (HEREINAFTER THE "TAXPAYER"), A BUSINESS THAT HAULED CARGO FOR HIRE IN COMMERCIAL MOTOR VEHICLES BETWEEN JANUARY, 1988 AND APRIL, 1992. THE TAXPAYER FILED TWO SEPARATE CLAIMS FOR CREDIT WITH THE DEPARTMENT FOR ALLEGED NON-HIGHWAY USE OF MOTOR FUEL. THE STATED REASON FOR THE NON-HIGHWAY USE ON THE JANUARY, 1988 THROUGH SEPTEMBER, 1989 CLAIM WAS PTO (POWER TAKE-OFF) OPERATED DUMP UNITS (DEPT. EX. NO. 5), AND FOR THE SECOND (4/90-4/92) CLAIM WAS NON-HIGHWAY OPERATING TIME, INCLUDING PTO (DEPT. EX. NO. 6). THE DEPARTMENT PAID THE TWO CLAIMS AND THEN ASSIGNED AN AUDITOR TO ASCERTAIN THE VALIDITY OF THE ALLEGED NON-HIGHWAY USAGE OF MOTOR FUEL. FOR EACH OF THESE TWO CLAIMS, THE AUDITOR DETERMINED THAT THE CLAIM WAS NOT VALID AND NOTICE OF TAX LIABILITY (NTL) NO. XXXXX WAS ISSUED IN THE AMOUNT OF \$6,412.00 (INCLUSIVE OF TAX, PENALTY

AND INTEREST) FOR THE PERIOD OF JANUARY, 1988 THROUGH SEPTEMBER, 1989, AND NTL NO. XXXXX IN THE TOTAL AMOUNT OF \$14,668.00 (INCLUSIVE OF TAX, PENALTY AND INTEREST) WAS ISSUED FOR APRIL, 1990 THROUGH APRIL, 1992. BECAUSE TAXPAYER FILED A TIMELY PROTEST TO EACH ASSESSMENT, A HEARING WAS SCHEDULED. THE HEARINGS ON THE TWO ASSESSMENTS WERE CONSOLIDATED BECAUSE OF COMMON ISSUES AND PARTIES.

OWNER AND OWNER, OWNERS, APPEARED AT HEARING AND TENDERED A SAMPLE OF THEIR RECORDS SHOWING THE DAILY ACTIVITY OF THEIR DRIVERS. THESE REPORTS, ENTITLED "DAILY AUDIT TRAIL BY DRIVER" CONTAIN DATA ON LOADS THAT INCLUDE THE DATE, DRIVER, ORIGIN AND DESTINATION, LOAD COMMODITY AND ITS WEIGHT, AND HAULING CHARGE AND DRIVER PAY.

AT ISSUE IN THIS PROCEEDING IS IF TAXPAYER IS ENTITLED TO A REFUND FOR SPECIAL FUEL ALLEGEDLY USED FOR OFF-ROAD PURPOSES. IT IS THE POSITION OF TAXPAYER THAT ITS CLAIMS ARE BASED NOT SOLELY UPON FUEL USED BY THE PTO MECHANISMS ON ITS TRUCKS, BUT RATHER THAT ITS TRUCKS ARE ENGAGED IN A LEGITIMATE OFF-ROAD HAULING OPERATION THAT USES FUEL ENTITLED TO REFUND. IT WAS THE POSITION OF THE DEPARTMENT PRIOR TO HEARING THAT TAXPAYER DID NOT SUBMIT SUFFICIENT PROOF TO ESTABLISH THE AMOUNTS OF NON-HIGHWAY USED FUEL FOR WHICH IT APPLIED FOR REFUNDS ON THE RMFT-11 MOTOR FUEL TAX REFUND FORMS. IT IS ALSO THE POSITION OF THE DEPARTMENT THAT TO ALLOW TAXPAYER'S REFUNDS TO STAND WOULD BE A DOUBLE CREDIT SITUATION FOR THE PORTION OF THE FUEL FOR WHICH TAXPAYER HAS ALREADY RECEIVED CREDIT AS A PURCHASE OF TAX-PAID SPECIAL FUEL ON LINE 7A OF THE MOTOR FUEL USE TAX RETURNS (IDR-280S) IT FILED PRIOR TO ITS SUBMISSION OF THE RMFT-11 REFUND FORMS.

THE RECORDS PRODUCED AT HEARING HAD NOT BEEN PREVIOUSLY SEEN BY THE DEPARTMENT AUDITOR. THE RECORDS WERE RECEIVED INTO EVIDENCE SUBJECT TO THE RIGHT OF THE DEPARTMENT TO REVIEW THEM. THE AUDITOR'S EXAMINATION

THEN SHOWED TAXPAYER HAS A NON-HIGHWAY FUEL USAGE PERCENTAGE OF 21.46, AND THE AUDITOR FURTHER ADJUSTED THIS BY THE AMOUNT OF SPECIAL FUEL THAT TAXPAYER HAD ALREADY LISTED AS TAX-PAID FUEL ON LINE 7A OF ITS IDR-280 RETURNS. I RECOMMEND THESE REVISED AMOUNTS OF ALLOWABLE OFF-HIGHWAY FUEL GALLONS BE TRANSLATED INTO TAX AND DEDUCTED FROM THE LIABILITY IN THE FINAL ASSESSMENTS.

FINDINGS OF FACT

AFTER REVIEWING THE TRANSCRIPT OF RECORD, INCLUDING ALL DOCUMENTARY EVIDENCE ADMITTED THEREIN, I MAKE THE FOLLOWING FACTUAL DETERMINATIONS:

1. THE TAXPAYER CONDUCTS BUSINESS OPERATIONS AS A TRUCKING COMPANY BY HAULING SAND, ROCK, COAL, GRAVEL, ETC. (TR. P. 10)
2. TAXPAYER FILED REFUND CLAIMS ON FORM RMFT-11 WITH THE DEPARTMENT FOR ILLINOIS MOTOR FUEL TAX ALLEGEDLY USED FOR PURPOSES OTHER THAN OPERATING VEHICLES UPON THE PUBLIC HIGHWAYS. THE TIMEFRAMES FOR THESE REFUND CLAIMS ARE JANUARY, 1988 THROUGH SEPTEMBER, 1989, AND APRIL 1990 THROUGH APRIL, 1992. (DEPT. EX. NOS. 5 AND 6). THE DEPARTMENT INITIALLY APPROVED THE TWO CLAIMS AND THEN REFERRED THEM TO THE AUDIT DIVISION WHICH RESULTED IN THE DEPARTMENT PERFORMING A CLAIM VERIFICATION AUDIT UPON TAXPAYER FOR EACH RESPECTIVE TIMEFRAME. (DEPT. EX. NOS. 1 AND 2)
3. FOR EACH AUDIT PERIOD THE AUDITOR REDUCED THE ALLOWABLE AMOUNT OF TAXPAYER'S CLAIM TO ZERO.

PURSUANT TO STATUTORY AUTHORITY, THE AUDITOR DID CAUSE TO BE ISSUED A CORRECTION OF RETURNS OR DETERMINATION OF MOTOR FUEL TAX DUE FOR EACH AUDIT AND THIS SERVED AS THE BASIS FOR EACH NTL. (DEPT. EX. NOS. 1-4)

4. DURING THE TIMEFRAMES AT ISSUE HEREIN TAXPAYER MADE A CONSIDERABLE NUMBER OF OFF-HIGHWAY TRIPS WITH ITS TRUCKS TO HAUL MATERIALS IN AND AROUND THE QUARRY. (TR. PP. 16-19; TAXPAYER EX. NO. 1)
5. THE BOOKS AND RECORDS SUBMITTED BY TAXPAYER SHOW ITS TRUCKS USING 21.46 % OF ITS FUEL IN AN OFF-HIGHWAY MANNER. (TAXPAYER EX. NO. 1)

#### CONCLUSIONS OF LAW

SECTION 13 OF THE MOTOR FUEL TAX LAW (35 ILCS 505/13) AUTHORIZES A REFUND WHEN MOTOR FUEL IS LOST OR USED FOR A PURPOSE OTHER THAN OPERATING A VEHICLE UPON THE PUBLIC HIGHWAYS. THIS SECTION STATES IN PERTINENT PART:

THE CLAIM SHALL STATE SUCH FACTS RELATING TO THE PURCHASE, IMPORTATION, MANUFACTURE OR PRODUCTION OF THE MOTOR FUEL BY THE CLAIMANT AS THE DEPARTMENT MAY DEEM NECESSARY AND THE TIME WHEN THE LOSS OR NONTAXABLE USE OCCURRED, AND THE CIRCUMSTANCES OF ITS LOSS OR THE SPECIFIC PURPOSE FOR WHICH IT WAS USED (AS THE CASE MAY BE), TOGETHER WITH SUCH OTHER INFORMATION AS THE DEPARTMENT MAY REASONABLY REQUIRE.

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THE DEPARTMENT MAY MAKE SUCH INVESTIGATION OF THE CORRECTNESS OF THE FACTS STATED IN SUCH CLAIMS AS IT DEEMS NECESSARY.

SECTION 13 AUTHORIZES REFUNDS WHEN MOTOR FUEL IS USED FOR A PURPOSE OTHER THAN OPERATING A MOTOR VEHICLE UPON THE PUBLIC HIGHWAYS, BECAUSE

THE TAX IS IMPOSED ON THE PRIVILEGE OF OPERATING MOTOR VEHICLES UPON THE PUBLIC HIGHWAYS. (35 ILCS 505/2). IN THE CONTEXT OF A MOTOR FUEL TAX REFUND CLAIM, THE ABOVE-CITED STATUTORY PROVISION REQUIRES A FILING PARTY TO PROVIDE FACTUAL INFORMATION RELATING TO THE FUEL PURCHASE, ALONG WITH OTHER INFORMATION THAT THE DEPARTMENT MAY REASONABLY REQUIRE, AND THE DEPARTMENT IS AUTHORIZED TO INVESTIGATE THE CORRECTNESS OF THE INFORMATION PROVIDED IN CONJUNCTION WITH SUCH CLAIM. WHEN A BUSINESS IS MAINTAINING THAT IT PURCHASED FUEL TAX-PAID AND THEN USED SOME FOR AN OFF-HIGHWAY PURPOSE, THE INFORMATION THAT SHOULD BE MAINTAINED INCLUDES VERIFIABLE RECORDS THAT SHOW THE NUMBER OF OFF-HIGHWAY MILES DRIVEN BY TAXPAYER VEHICLES.

IN THE TWO INSTANT NTL MATTERS, THE TAXPAYER HAS SUBMITTED DOCUMENTARY EVIDENCE FROM ITS OWN RECORDS TO SHOW THAT IT IS ENTITLED TO CREDIT FOR NON-ROAD USAGE. THE RECORD IS NOT ENTIRELY CLEAR WHY THIS EVIDENCE WAS NOT SUBMITTED EARLIER AND REVIEWED BY THE DEPARTMENT PRIOR TO HEARING, UNLESS RELATED TO THE DEPARTMENT'S POSITION THAT SPECIAL FUEL ALREADY TAKEN AS A CREDIT ON IDR-280 MOTOR FUEL USE TAX RETURNS PRECLUDES ALLOWANCE OF ANY REFUND ON THE RMFT-11 CLAIM FORM. IN THE INSTANT CASE, THE AUDITOR HAS NOW VERIFIED THAT NOT ALL THE CONTESTED FUEL WAS TAKEN EARLIER BY TAXPAYER AS A CREDIT ON LINE 7A OF THE IDR-280S, AND HAS ACCORDINGLY MADE AN ADJUSTMENT FOR THE FUEL THAT WAS SO TAKEN IN EACH NTL TIMEFRAME.

IN SUMMARY, FOR EACH NTL HEREIN, I FIND THE REVISED LIABILITY AMOUNT AS DETERMINED BY THE AUDITOR TO BE THE CORRECT AMOUNT THAT SHOULD BE IN THE FINAL ASSESSMENT.

#### RECOMMENDATION

BASED UPON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW STATED ABOVE,

I RECOMMEND THE DEPARTMENT REDUCE NOTICE OF TAX LIABILITY NOS. XXXXX AND  
XXXXX, AND ISSUE FINAL ASSESSMENTS FOR EACH.

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KARL W. BETZ  
ADMINISTRATIVE LAW JUDGE